

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

PRIME HEALTHCARE SERVICES—
LEHIGH ACRES, LLC, d/b/a Lehigh
Regional Medical Center,

Plaintiff,

Case No. 3:20-cv-988-J-34JBT

vs.

BLUE CROSS BLUE SHIELD OF
FLORIDA, INC., and DOES 1 THROUGH
25, INCLUSIVE,

Defendants.

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ORDER

THIS CAUSE is before the Court on Prime Healthcare Services-Lehigh Acres, LLC, dba Lehigh Regional Medical Center's Opposition to Defendant's Motion to Dismiss Plaintiff's Complaint and Request for Remand (Doc. 17; Response), filed on October 20, 2020. Upon review, it appears that Plaintiff has imbedded within the Response a request for the Court to remand this action to state court. See Response at 4-6. However, a request for affirmative relief from the Court, such as an order remanding this action to state court, must be made by separate motion. See Rule 7(b), Federal Rules of Civil Procedure (Rule(s)) ("A request for a court order must be made by motion."). Accordingly, the Court will strike the Response and direct Plaintiff to file a proper response to Defendant's motion and, if Plaintiff continues to seek remand, a separate motion for remand.

In addition to its request for remand, Plaintiff also imbeds within the Response an alternative request for leave to amend its complaint in the event the Court finds that its

allegations are inadequate. See Response at 20. However, a request to amend a pleading is a request for affirmative relief from the Court and, as stated above, is not properly made when simply included in a response to a motion. See Rule 7(b); see also Rosenberg v. Gould, 554 F.3d 962, 965 (11th Cir. 2009) (“Where a request for leave to file an amended complaint simply is imbedded within an opposition memorandum, the issue has not been raised properly.”) (quoting Posner v. Essex Ins. Co., 178 F.3d 1209, 1222 (11th Cir. 1999)).

Moreover, even if it were proper to include this request in the Response, the request is otherwise due to be denied for failure to comply with Local Rules 3.01(a) and 3.01(g), United States District Court, Middle District of Florida (Local Rule(s)). Local Rule 3.01(a) requires a memorandum of legal authority in support of a request from the Court. See Local Rule 3.01(a). Local Rule 3.01(g) requires certification that the moving party has conferred with opposing counsel in a good faith effort to resolve the issue raised by the motion and advising the Court whether opposing counsel agrees to the relief requested. See Local Rule 3.01(g). In addition to these deficiencies under the Local Rules, the request in the Response also fails to satisfy the requirement that “[a] motion for leave to amend should either set forth the substance of the proposed amendment or attach a copy of the proposed amendment.” Long v. Satz, 181 F.3d 1275, 1279 (11th Cir. 1999); see also McGinley v. Fla. Dep’t of Highway Safety and Motor Vehicles, 438 F. App’x 754, 757 (11th Cir. 2011) (affirming denial of leave to amend where plaintiff did not set forth the substance of the proposed amendment); United States ex. rel. Atkins v. McInteer, 470 F. 3d 1350, 1361-62 (11th Cir. 2006) (same). Thus, the Court will not entertain Plaintiff’s request for relief included in the Response. Plaintiff is advised that, if it wishes to pursue such relief,

it is required to file an appropriate motion, in accordance with the Federal Rules of Civil Procedure and the Local Rules of this Court.

ORDERED:

1. Prime Healthcare Services-Lehigh Acres, LLC, dba Lehigh Regional Medical Center's Opposition to Defendant's Motion to Dismiss Plaintiff's Complaint and Request for Remand (Doc. 17) is **STRICKEN**.
2. Plaintiff shall have up to and including **November 6, 2020**, to file a proper response to the Motion.
3. To the extent Plaintiff seeks affirmative relief from the Court, it must file an appropriate motion or motions requesting such relief.

DONE AND ORDERED in Jacksonville, Florida, this 23rd day of October, 2020.


MARCIA MORALES HOWARD
United States District Judge

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Copies to:

Counsel of Record